

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Department of Transportation, of the	:	
State of Illinois, for an in behalf of the	:	
People of the State of Illinois	:	
-vs-	:	
Commonwealth Edison Company	:	
	:	08-0110
Petition for approval of the taking or	:	
damaging of certain properties owned by	:	
a common transportation carrier in	:	
DuPage County, Illinois by exercising the	:	
right of eminent domain.	:	

ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER

By the Commission:

On February 15, 2008, the Department of Transportation of the State of Illinois ("Petitioner") filed its verified petition with the Illinois Commerce Commission ("Commission") to approve the taking of certain interests in real estate owned by Commonwealth Edison Company, an Illinois Corporation (the "Respondent" or "ComEd")), a public utility subject to the jurisdiction of the Illinois Commerce Commission, through exercise of the power of eminent domain.

Pursuant to notice by the Commission to all parties to this proceeding, a hearing was conducted on December 13, 2011 before an Administrative Law Judge of the Commission and the Administrative Law Judge was advised that the parties reached an agreement to amend the legal descriptions for the property interests to be acquired by the Petitioner.

The Petitioner and Respondent agree that the parties attempted to conclude a voluntary conveyance of the property interests sought by the Petitioner from the Respondent. Although the parties agreed to the amount of compensation to be paid, negotiations failed based on certain title clearance issues. To clear those title exceptions the Petitioner must obtain an Order from the Commission approving the taking of Respondent's property before it may file an eminent domain action to acquire a fee simple absolute title and access control rights from the Respondent needed for Petitioner's public highway improvement project.

The property legally described in attached Exhibits A and B, respectively (hereafter the "Property") is required as part of a project to construct the Elgin-O'Hare Expressway at and along Thorndale and Prospect Avenue in DuPage County, Illinois. Respondent owns the Property and/or has an interest in it. The improvement project is a public work and constitutes a public purpose, namely a public highway. Public convenience and necessity support the acquisition by Petitioner on behalf of the People of the State of Illinois of a fee simple absolute title and access control rights to the Property legally described in attached Exhibits A and B, respectively. The Petitioner has established the right to condemn the Respondent's Property through the use of its power of eminent domain and to acquire such property rights for the People of the State of Illinois.

The Petitioner now seeks to acquire fee simple absolute title and access control rights to the Property. The property sought to be acquired in fee simple title consists of a tract of land of approximately 9.298 acres, more or less, legally described in Exhibit A attached hereto. The access control line is legally described in Exhibit B attached hereto. The Plat of Highways depicting the Property sought to be acquired is attached hereto as Exhibit C.

The Petitioner also presented its condemnation engineer, Lin Li, as a witness at the hearing. Ms. Li testified to the improvement project, the Property required from the Respondent to construct the project, the negotiations with the Respondent, the failure of negotiations to resolve all title clearance issues, the failure to conclude a voluntary conveyance of the Property needed at this time, and the requirement that the Petitioner acquire a fee simple title and access control rights to and from the remainder to construct Petitioner's improvement.

The Respondent was unwilling or unable to execute all conveyance documents required by the Department to voluntarily close and conclude the transaction. After the conclusion of the hearing on December 13, 2011, the record was marked "Heard and Taken" by the Administrative Law Judge. All facts necessary for a decision herein are adequately contained in the record of proceedings.

The Commission, having considered the verified petition, the testimony presented and all exhibits in the record herein, is of the opinion and finds:

- (a) The Department of Transportation of the State of Illinois exists by virtue of the laws of the State of Illinois;
- (b) Respondent is a regulated public utility in the State of Illinois;
- (c) The Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (d) Under and by virtue of the Illinois Highway Code, Chapter 605 ILCS 5/4-501, Petitioner is engaged in the construction of the Elgin-O'Hare

Expressway at Thorndale and Prospect Avenue in DuPage County, Illinois;

- (e) The Petitioner must acquire the Property from the Respondent to construct Petitioner's improvement in DuPage County, Illinois;
- (f) The subject land, rights, and other property are private property and the Respondent owns the Property and/or has an interest in or claims to have some interest therein;
- (g) The work and improvement project is a public work, is for public use, and constitutes a public purpose, namely a public highway; it is necessary to the public convenience and necessity that Petitioner have and acquire the Property to construct its improvement project for the use of the People of the State of Illinois;
- (h) The Petitioner has the right to condemn and acquire the Property for public highway purposes, said Property being situated in the County of DuPage, State of Illinois.
- (i) It is necessary at this time for the Petitioner to acquire the Property for the above-described highway improvement project in DuPage County for the use of the People of the State of Illinois; that just compensation for the taking shall be determined as agreed by the parties or by order of the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois and the Petitioner is therefore authorized and the Commission hereby approves the Petitioner to proceed to acquire the Property described herein through the exercise of the right of eminent domain under the eminent domain laws of this State.

IT IS THEREFORE ORDERED that the approval of the Illinois Commerce Commission be, and it is hereby, granted to the Petitioner, Department of Transportation of the State of Illinois, to exercise the power of eminent domain for the taking of the fee simple absolute title and access control rights to the Property owned by Respondent and legally described in Exhibits A and B, respectively, attached to this order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED:
BRIEFS ON EXCEPTIONS DUE:
REPLY BRIEFS ON EXCEPTIONS DUE:

December 16, 2011
December 22, 2011
December 29, 2011

Terrance A. Hilliard
Administrative Law Judge